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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/056,971	01/25/2002	Larry Blake	TEKIA.004A	3885
20995	7590	02/09/2005	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP			WILLSE, DAVID H	
2040 MAIN STREET			ART UNIT	
FOURTEENTH FLOOR			PAPER NUMBER	
IRVINE, CA 92614			3738	

DATE MAILED: 02/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/056,971

Applicant(s)

BLAKE ET AL.

Examiner

Dave Willse

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-104 and 220-237 is/are pending in the application.
- 4a) Of the above claim(s) 75-104 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-74 and 220-237 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9-10-04</u> | 6) <input type="checkbox"/> Other: _____ |

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The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 227 and 235 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. The lens (as opposed to the optic) being foldable for insertion through a small incision is not believed to be supported in the original disclosure.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-11, 13, 15-22, 27-30, 32-48, 50, 52-59, 64-67, 69-74, 221-226, and 230-234 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Poler, US 4,434,515. The embodiment of Figures 10 and 11, for example, includes V shaped elements each having a pair of legs (e.g., elements 48b and 48c) and rounded and square corners. Several contact points are involved (column 3, lines 41-43; column 5, lines 1-15; etc.). Regarding claim 5 and others,

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Figures 10 and 11, for example, illustrate cleats **18-21** and **18'-21'** and apertures **16-17** and **16'-17'**. Regarding claim 20 and others, the attachments are asymmetrical with respect to the plane bisecting the optic and perpendicular to the optical axis, because the attachment features are complementary rather than “mirror images” about said plane. Regarding claim 21 and others, the pair of legs is deemed to be sufficiently flexible so as to be *capable* of being moved up to or over each other because of the “locally weakened angular connection” (column 5, lines 26-27) and because of the haptic structure being of “thin-sheet compliant flexible material” (column 2, lines 25-27); alternatively, “at least one “V”-shaped element” (present claim 1, line 4) can be interpreted in a collective sense so that elements **46c** and **48c**, for example, can be viewed as a pair of legs (column 5, lines 3-6). Regarding claim 22 and others: column 5, lines 60-65. Regarding claim 27 and others: column 6, lines 1-3. Regarding claim 28 and others: column 5, lines 65-68, and MPEP § 2113. Regarding claims 32-35 and others: column 5, lines 28-35. Regarding claim 230, in view of the aforementioned observations, a leg pair of *capable* of fitting simultaneously through a small incision, whether or not such was the intent.

Claims 12, 14, 23-26, 31, 49, 51, 60-63, 68, 220, 227-229, and 235-237 are rejected under 35 U.S.C. 103(a) as being unpatentable over Poler, US 4,434,515. Regarding claim 12 and others, tinted eyelets and cleats would have been obvious to the ordinary practitioner (if not inherent from the selected polyimide) in order to reduce glare. Official notice is taken that the particular materials identified in present claims 23 and 24, along with the physical property ranges set forth in claims 25, 26, and 31, were well known in the art for haptics and would have been obvious, if not inherent, from the preferred characteristics listed at column 5, line 63, and elsewhere in the Poler patent. Regarding claim 220, Poler is largely silent as to the features of

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the optic 10, but selecting an optic of silicone or polyHEMA, for example, would have been obvious because these types of optics, having a broad range of corrective powers, were readily accessible to one of ordinary skill at the time of the instant invention and possess advantages as to biocompatibility, softness, etc.

Claims 1-4, 28-30, 32-41, 221-223, 230, and 231 are rejected under 35 U.S.C. 102(b) as being anticipated by Seidner, US 4,463,458. The haptics 14 and 16, or 52 and 54, are V-shaped, especially prior to insertion (column 3, lines 53-58; column 4, line 65, through column 5, line 2). The haptics 70 and 72 (Figure 5) are V-shaped with a square corner at contact points 78 and 80, respectively. Regarding claims 29 and 30: MPEP § 2113. Regarding claim 32 and others: column 3, lines 58-62.

Claims 26, 27, 31, 229, and 237 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seidner, US 4,463,458. The particular material characteristics would have been obvious to the ordinary practitioner under routine experimentation in view of column 4, lines 52-54, and column 3, lines 53-62.

Claims 1-5, 7-9, 11, 13, 15, 17-21, 28-30, 32-42, 44-46, 48, 52, 54-58, 65-67, 69-74, 220-224, 226-228, 230-232, and 234-236 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Guilbert et al., FR 2 728 459 A1: Derwent abstract; drawings. V-shaped elements are defined proximate the ends of the double ring support. Regarding claim 5 and others, cleats and eyelets are shown, for example, in Figures 12-18. Regarding claim 21 and others, since the double supporting ring has a "semi-rigid structure which is partially compressible" (Derwent abstract, lines 4-5), it is possible to move the legs of the V-shaped elements up to one another by

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exerting a sufficient amount of force. Regarding claim 230 and others: Derwent abstract, last line (pertaining to the advantage of the invention).

Claims 6, 10, 12, 14, 16, 22-27, 31, 43, 47, 49-51, 53, 59-64, 68, 225, 229, 233, and 237 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guilbert et al., FR 2 728 459 A1: Derwent abstract; drawings. Regarding claim 6 and others, the haptic rather than the optic having the cleats would have been an obvious interchange of parts (*In re Einstein*, 8 USPQ 167). Regarding claim 10 and others, the eyelet being a filament would have been obvious in order to simplify manufacturing of the device. Regarding claim 12 and others, tinting would have been obvious to the ordinary practitioner in order to provide glare reduction. Regarding claim 22 and others, the particular materials and properties for the double ring support would have been obvious from its intended use and characteristics as set forth in the Derwent abstract.

The Applicant's remarks have been reviewed. The Applicant's comments suggest that the language "at least two contact points for the eye each located on one of said "V"-shaped elements" (Applicant's Response of September 10, 2004: page 14, lines 15-16 and 30-31; page 15, lines 16-17), but lines 6-7 of present claim 1 in fact read "at least two contact points for the eye each located on said *at least* one "V"-shaped element" (emphasis added). Therefore, the two or more contact points need only be located on the "V"-shaped elements *collectively*, provided that more than one "V"-shaped element exists, as is true of the Poler embodiment illustrated in Figures 10 and 11. Regarding claim 39, the optic certainly *remains* attached to the haptic after being implanted within an eye; the examiner refuses to read nonexistent limitations into the instant claims. The Applicant has not traversed the examiner's assertion of official notice with regard to materials and physical properties as set forth in the rejection under 35 U.S.C. 103(a)

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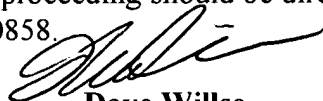
based upon the Poler patent; therefore, the "well known in the art" statement is taken to be admitted prior art (MPEP § 2144.04).

The added claims and other revisions necessitated the added grounds of rejection, in which the closest references (relative to the current claims) should be fully applied (MPEP §§ 706.02 and 706.07). Therefore:

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dave Willse whose telephone number is (571) 272-4762. The examiner can normally be reached Monday through Thursday and often on Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached at (571) 272-4754. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.



Dave Willse
Primary Examiner
Art Unit 3738